

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JAMES V. BAILEY, JR.,)
vs.)
Plaintiff,)
vs.)
CAREMARK, INC.,)
Defendant.)
Case No. 06-0135-CV-W-0ODS

ORDER AND OPINION GRANTING DEFENDANT'S MOTION TO DISMISS

Pending is Defendant's Motion to Dismiss. Plaintiff has not responded, and the time for doing so has passed. See Local Rule 7.1. Defendant's motion (Doc. # 6) is granted and the case is dismissed.

This case was commenced in state court on August 30, 2004. Defendant was not served until January 25, 2006, by which time Plaintiff had amended his pleadings twice. Defendant removed the case to federal court.

Plaintiff's operative pleading alleges he was fired for intentionally hanging up on customer telephone calls, but the real reason he was fired was because he is black. Plaintiff references his EEOC Complaint and attaches a copy of the Right to Sue Letter. The Right to Sue Letter was issued on January 28, 2004, and advised Plaintiff he had ninety days to file a lawsuit if he wished to do so.

Defendant correctly points out Plaintiff did not initiate this lawsuit within ninety days of the Right to Sue Letter's issuance. Plaintiff's claim is therefore time-barred. 42 U.S.C. § 2000e-5(f)(1); see also Brooks v. Ferguson-Florissant School Dist., 113 F.3d 903 (8th Cir. 1997). The Motion to Dismiss is granted and the case is dismissed.

IT IS SO ORDERED.

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT

DATE: March 31, 2006